

**AUGUST 2006**

## **LAND BANKING REAUTHORIZATION**

HB 223 (77-2-366, MCA) passed the Legislature in 2003 with bipartisan support, including unanimous support from the Land Board. During the debate about the bill, a sunset of October 1, 2008 was inserted into the bill to ensure that land banking was a pilot program. To date, 118,038 acres have been nominated for sale, of which the Board has approved 26,145 acres to continue through the Land Banking process. Sale tracts total 19,510 acres. Sales are expected to generate up to \$10,700,000.

Given the pending sunset, action must be taken in the upcoming session or the law will sunset during the FY 08/09 biennium. Attached, is a Bill entitled: "AN ACT TO REAUTHORIZE THE SALE OF STATE TRUST LANDS UNDER LAND BANKING AND AMEND 77-2-363, AND 77-2-366, at the request of the Board of Land Commissioners.

The changes to 77-2-363 are;

- Sunset from October 1, ~~2008~~ to 2011. This will allow the land banking to continue as a pilot program.
- Bid deposits received ~~45~~ 20 days prior to the auctions. DNRC has received several comments that this requirement is onerous when trying to secure loans.
- Bid bond amount of ~~50~~ 20% of the minimum bid. DNRC has received comments from potential bidders that this requirement has prohibited them from participating in the auction process. The combination of the above 45 day requirement and the 50% bid deposit requires securing loans, paying interest on significant amounts of money.
- Preparation of state trust lands for sale requires an appraisal, cultural surveys, land surveys and advertising. These services are typically contracted by the department in the preparation of the sale and the costs are born by the applicant at closing. This provision provides for the collection of the private funds prior to incurring the costs and credit the purchaser/lessee at closing.

The Director recommends seeking authorization of the land banking program, at the request of the Land Board, during the 2007 legislative session with the attached Bill.

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\*\*\* Bill No. \*\*\*

Introduced By \*\*\*\*\*

By Request of the Board of Land Commmissioners

A Bill for an Act entitled: " AN ACT REVISING LAND BANKING LAWS;EXTENDING THE DEADLINE FOR THE SALE OF STATE TRUST LANDS UNDER LAND BANKING; EXTENDING THE AUTHORITY OF THE STATE BOARD OF LAND COMMISSIONERS TO ACQUIRE LANDS FOR THE FINANCIAL BENEFIT OF TRUST BENEFICIARIES; PROVIDING FOR REMITTING TO THE DEPARTMENT BY LESSEES THE ESTIMATED COSTS OF PREPARING NOMINATED PARCELS FOR SALE; AMENDING 77-2-366 AND 77-2-363; AND PROVIDING AN EFFECTIVE DATE".

Be it enacted by the Legislature of the State of Montana:

**Section 1.** Section 77-2-366, MCA, is amended to read:

" **77-2-366. Land banking process -- time limit -- report to environmental quality council.** (1) State land may not be sold through the land banking process pursuant to 77-2-361 through 77-2-367 after October 1, ~~2008~~ 2011. Land banking purchases under 77-2-364 may continue after October 1, ~~2008~~ 2011, until all the proceeds in the state land bank fund are expended or revert to the public school fund or

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the permanent fund of the respective trust pursuant to 77-2-362(2)(d).

(2) The department shall provide a report to the environmental quality council by July 1, ~~2008~~ 2011, that describes the results of the land banking program in detail. At a minimum, the report must summarize the sale and purchase transactions made through the program by type, location, acreage, value, and trust beneficiary. The environmental quality council shall make any recommendations that it determines necessary regarding the implementation of the state land banking process, including recommendations for legislation."

*{Internal References to 77-2-366:*

**Section 2.** Section 77-2-363, MCA, is amended to read:

**" 77-2-363. Land banking land sales and limitations.**

(1) The board may not cumulatively sell or dispose of more than 100,000 acres of state land. Seventy-five percent of the acreage cumulatively sold must be isolated parcels that do not have a legal right of access by the public. At any one time during the life of the land banking process, the board may not sell more than 20,000 acres of state land

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unless the board has acted to use the revenue from that land to make purchases pursuant to 77-2-364.

(2) (a) A person bidding to purchase state land offered for sale shall ~~45~~ 20 days prior to the day of auction deposit with the department a bid bond in the form of a certified check or cashier's check drawn on any Montana bank equal to at least ~~50~~ 20% of the minimum sale price specified by the department pursuant to 77-2-323(1) to guarantee the bidder's payment of the purchase price.

(b) If the current lessee of the land to be sold has initiated the sale as authorized by 77-2-364, the lessee may cancel the sale by giving notice to the department at least ~~30~~ 10 days prior to the day of the auction. When the sale is canceled by the lessee, the lessee shall pay the costs incurred by the department for the preparation of the sale including any costs incurred for preparation of documents required by 75-1-201.

(c) The department shall retain the bid bond of the successful bidder and shall return the bid bonds of the unsuccessful bidders. If the successful bidder fails to comply with the terms of the sale for any reason, the successful bidder's bid bond must be forfeited and credited to the interest and income account of the proper trust.

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(3) Except for a sale that is initiated by the lessee of the parcel of land proposed for sale, prior to the proposed sale of any parcel of state land under the land banking process, the board shall give 60 days' notice of the proposed sale to the lessee of the parcel to allow the lessee sufficient time to determine whether the lessee wishes to propose an exchange of the land to the board.

(4) For a sale initiated by the board or the department, the lessee of the land must be afforded all the rights and privileges to match the high bid, as provided in 77-2-324.

(5) Where the lessee has initiated a sale of land under this section, the lessee shall remit to the department the estimated costs of preparing the parcel for sale, including but not limited to appraisals, cultural surveys, environmental review pursuant to 75-1-101, and land surveys. Such payment shall be made within 10 days after the sale of the parcel has received preliminary approval by the board. The funds remitted for the costs of the sale shall be applied to the actual costs at closing if the parcel is sold to the lessee. If the parcel is sold to a party other than the lessee, then the funds remitted by the lessee shall be refunded to the lessee and actual costs of

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preparing the parcel for sale will be assessed to the  
purchaser at closing."

*{Internal References to 77-2-363:*

NEW SECTION. **Section 3. {standard} Effective date.**  
[This act] is effective July 1, 2006.

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